

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

**SCOTT SCHOLZ,** ) Case No.  
 )  
Plaintiff, ) **COMPLAINT**  
 )  
vs. ) **JURY TRIAL DEMANDED**  
 )  
**WELLS FARGO BANK, NATIONAL** )  
**ASSOCIATION,** )  
 )  
Defendant. )

**NATURE OF ACTION**

1. This is an action brought under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction under 47 U.S.C. § 227(b)(3) and 28 U.S.C. § 1331.

3. Venue is proper before this Court pursuant to 28 U.S.C. §1391(b), where the acts and transactions giving rise to Plaintiff’s action occurred in this State and this district, where Plaintiff resides in this State and this district, and where Defendant transacts business in this State and this district.

Complaint -1

Dennis R. Kurz  
WEISBERG & MEYERS, LLC  
5025 N. Central #602  
Phoenix, Arizona 85012  
888-595-9111  
866-565-1327 facsimile  
dkurz@AttorneysForConsumers.com

**PARTIES**

4. Plaintiff, SCOTT SCHOLZ ("Plaintiff"), is a natural person who at all relevant times resided in the State of Washington, County of King, and City of Bellevue.

5. Defendant, WELLS FARGO BANK, NATIONAL ASSOCIATION ("Defendant") is an entity that may be served through its registered agent: Corporation Service Company, 2730 Gateway Oaks Dr. Suite 100, Sacramento, CA 95833.

**FACTUAL ALLEGATIONS**

6. On August 12, 2010, Plaintiff, by and through undersigned counsel, sent Defendant written communication that, among other things, expressly revoked permission for Defendant to place telephone calls to Plaintiff's cellular telephone. A true and accurate copy of this letter is attached hereto as Exhibit "A".

7. If any such prior consent existed prior to August 12, 2010 for Defendant to place non-emergency calls to Plaintiff's cellular telephone, Plaintiff's letter of August 12, 2010 expressly revoked by written notice such consent.

8. Thereafter, Defendant willfully and knowingly utilized an automatic telephone systems and/or an artificial or prerecorded voice to make and or place no less than eighty-five (85) non-emergency calls to Plaintiff's cellular telephone, on the following dates and times:

- August 21, 2010 @ 12:15 P.M.
- August 24, 2010 @ 8:46 A.M., 1:54 P.M.
- August 25, 2010 @ 9:00 A.M.
- August 30, 2010 @ 9:00 A.M.
- August 31, 2010 @ 10:55 A.M., 3:55 P.M.

- September 1, 2010 @ 8:25 A.M.
- September 2, 2010 @ 9:10 A.M.
- September 3, 2010 @ 9:12 A.M.
- September 7, 2010 @ 8:29 A.M.
- September 8, 2010 @ 8:44 A.M., 2:30 P.M.
- September 9, 2010 @ 8:25 A.M., 11:30 A.M.
- September 10, 2010 @ 8:17 A.M., 12:11 P.M.
- September 13, 2010 @ 11:00 A.M.
- September 14, 2010 @ 11:26 A.M., 12:17 P.M.
- September 16, 2010 @ 8:32 A.M., 10:59 A.M.
- September 17, 2010 @ 8:15 A.M., 9:26 A.M.
- September 22, 2010 @ 8:30 A.M., 10:23 A.M., 2:30 P.M.
- September 23, 2010 @ 8:31 A.M., 10:53 A.M., 11:42 A.M., 3:42 P.M.
- September 24, 2010 @ 8:23 A.M.
- September 27, 2010 @ 8:25 A.M., 9:25 A.M., 9:58 A.M., 12:23 P.M., 1:00 P.M., 2:57 P.M., 4:18 P.M.
- September 28, 2010 @ 8:29 A.M.
- September 29, 2010 @ 9:00 A.M., 9:27 A.M.
- September 30, 2010 @ 8:00 A.M., 9:11 A.M., 9:22 A.M.
- October 1, 2010 @ 8:12 A.M.
- October 4, 2010 @ 8:26 A.M., 11:32 A.M., 1:23 P.M.

Complaint -3

Dennis R. Kurz  
WEISBERG & MEYERS, LLC  
5025 N. Central #602  
Phoenix, Arizona 85012  
888-595-9111  
866-565-1327 facsimile  
dkurz@AttorneysForConsumers.com

- October 5, 2010 @ 8:26 A.M., 10:55 A.M., 1:50 P.M.
- October 6, 2010 @ 8:17 A.M., 9:13 A.M., 11:40 A.M., 2:24 P.M.
- October 7, 2010 @ 8:09 A.M.
- October 8, 2010 @ 8:09 A.M., 9:12 A.M., 10:45 A.M.
- October 10, 2010 @ 8:00 A.M., 9:18 A.M., 9:38 A.M., 11:26 A.M.
- October 18, 2010 @ 4:06 P.M.
- October 19, 2010 @ 9:54 A.M.
- October 21, 2010 @ 10:27 A.M.
- October 25, 2010 @ 8:28 A.M.
- October 28, 2010 @ 8:10 A.M.
- October 29, 2010 @ 8:17 A.M.
- November 1, 2010 @ 8:27 A.M., 10:20 A.M.
- November 2, 2010 @ 8:32 A.M.
- November 3, 2010 @ 8:17 A.M.
- November 4, 2010 @ 8:11 A.M., 1:41 P.M.
- November 5, 2010 @ 8:17 A.M.
- November 8, 2010 @ 8:08 A.M.
- November 9, 2010 @ 8:05 A.M., 10:15 A.M.
- November 10, 2010 @ 8:15 A.M.
- November 15, 2010 @ 9:25 A.M.
- November 16, 2010 @ 12:45 P.M.

- November 17, 2010 @ 10:10 A.M.
- November 18, 2010 @ 9:11 A.M.

**COUNT I**  
**VIOLATION OF 47 U.S.C. § 227(b)(1)(A)(iii)**

9. Plaintiff repeats and re-alleges each and every allegation contained above.
10. 47 U.S.C. § 227(b)(1)(A)(iii) provides:

(b) Restrictions on use of automated telephone equipment  
(1) Prohibitions

It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States—

(A) to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice—

\* \* \*

(iii) to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call.

11. Defendant violated 47 U.S.C. § 227(b)(1)(A)(iii) by willfully and knowingly utilizing an automatic telephone dialing system to make and/or an artificial or prerecorded voice to make and/or place a telephone call to Plaintiff's cellular telephone number.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Adjudging that Defendant violated 47 U.S.C. § 227(b)(1)(A)(iii);
- b) Awarding Plaintiff statutory damages, pursuant to 47 U.S.C. § 227(b)(3)(B), in the amount of \$500.00 per violation;

- 1 c) Awarding Plaintiff statutory damages, pursuant to 47 U.S.C. § 227(b)(3), in the  
2 amount of \$1,500.00 per violation;  
3  
4 d) Awarding Plaintiff actual damages, pursuant to 47 U.S.C. § 227(b)(3)(B);  
5  
6 e) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action;  
7  
8 f) Awarding Plaintiff any pre-judgment and post-judgment interest as may be  
9 allowed under the law.

10 **TRIAL BY JURY**

11 Plaintiff is entitled to and hereby demands a trial by jury.

12 Respectfully submitted this 1<sup>st</sup> day of March, 2012.

13 s/Dennis R. Kurz  
14 Dennis R. Kurz (WSB# 43735)  
15 WEISBERG & MEYERS, LLC  
16 5025 North Central Ave., #602  
17 Phoenix, AZ 85012  
18 888 595 9111 ext 412  
19 866 565 1327 facsimile  
20 dkurz@AttorneysForConsumers.com  
21 Attorneys for Plaintiff  
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